IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 23RD AUGUST 2007 / 1ST BHADRA 1929

Bail Appl..No. 5122 of 2007()

CRIME NO.187/07 OF CHEVAYUR POLICE STATION.

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PETITIONER: ACCUSED NO.5

B.R.JYOTHISH,S/O. LATE BHANUPANICKER,
AGED 37 YEARS,KOTTAPURATH HOUSE,
NEDUMANGAD PO, THIRUVANANTHAPURAM.

BY ADV. SRI.S.GOPAKUMARAN NAIR

RESPONDENTS: COMPLAINANT

STATE OF KERALA,REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERLA,
ERNAKULAM.

BY P.P. SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 5122 of 2007

Dated this the 23rd day of August, 2007

ORDER

Application for regular bail. The petitioner is the 6th accused and he faces allegations along with other accused persons for offences punishable, inter alia, under Sec.376 of the IPC. The crux of the allegations is that the victim – a girl aged about 19 years – an inmate of the "after care home", was taken away from the after care home by the 1st accused - a relative of hers and her husband – the 2nd accused. They allegedly offered the girl for sexual intercourse to various persons including the petitioner herein. The petitioner herein is alleged to have had sexual intercourse with the said victim. There is no specific case that it was a sexual intercourse without the consent of the victim; but the allegation is that she was forced to yield to the request of A1 and A2 to consent to such sexual intercourse. A1 and A2 are allegedly guilty of collecting money from the persons who had sexual intercourse

with the victim.

2. The learned counsel for the petitioner submits that the petitioner – an official of Prison Department, is absolutely innocent. He had not gone to the victim to have sexual intercourse with her. Even assuming the worst and accepting all the allegations of the prosecution, the petitioner is only alleged to have had sexual intercourse with a woman who had consented to such sexual intercourse at the instance of some others who were allegedly making use of her. There is nothing to show that there was any amount of resistance or want of inclination on the part of the victim when she allegedly entered into the sexual intercourse with that person who it is now alleged was the petitioner. The petitioner was arrested on 5/8/07 and he continues in custody from that date.

3. The learned counsel for the petitioner prays, the learned Public Prosecutor does not oppose the said prayer and I am satisfied that the petitioner can now be enlarged on bail subject, of course, to appropriate conditions. In the absence of opposition, it is not necessary for me to advert to the facts in any greater detail. Suffice it to say that the learned Public Prosecutor has taken me through the crucial and salient aspects

available in the Case Diary.

4. **In the result:**

(a) The application is allowed.

(b) The petitioner shall be released on bail on the following terms and conditions:

(i) The petitioner shall execute a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer on all Mondays between 10 a.m. and 12 noon for a period of one month and thereafter as and when directed by the Investigating Officer in writing to do so.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge